INDEX

	Page
Motion to Reconsider Order Denying Right of Intervention	1
U. S. Brief Contends Political Statement Re 3-Mile Belt Supercedes Acts of Congress	2
Claim For 3-Mile Belt National Policy Based On Jefferson Letter, 1793	3
Jefferson Repudiated 1793 Letter Established Fixed Limit, And Claimed To Gulf Stream	4
Madison Claimed To Gulf Stream	4
1807 Act Of Congress Ratified Gulf Stream Claim	6
Secretary Seward Negotiated Alaska Treaty 10 Leagues From Coast (Not 3 Miles)	6
No Treaty Ever Fixed 3-Mile Belt	7
Congress Fixed 4 Leagues, And Other Distances Further Seaward	8
La. Territory Extended Generally To Continental Shelf	9
No Basis For So-Called "Traditional 3-Mile Belt National Policy"	10
Attorney General And State Department Made Same 3-Mile From Shore Recommendation To Congress—But Congress Rejected It	11
"Coastline" Distinguished From "Shoreline"	11 to 15
"Coastline" Not Fixed By Coast Guard For Navigation, But Fixed Originally Under 1806 Act Of Congress—Long Before Any Law Enacted Regarding Navigation	17
La. "Coastline" already Established Under Acts of Congress	20
State Boundary Cannot Be Changed Without Consent Of Its Legislature	21
U. S. Brief Would Have Political Statement Supercede Acts Of Congress And Change State Boundary Without Its Consent	23
State Limits 3 Leagues From Coast In Gulf	26

CITATIONS

Cases:

Church v. Hubbart, 2 Cranch, 187	7
Louisiana v. Mississippi, 202 U. S. 1	28
Queyronze v. U. S. 3 Wall 83	19
Rhode Island v. La., 347 U. S. 272	23
U. S. v. Bevans, 3 Wheat. 336	8
U. S. v. Lyndes Heirs, 11 Wall. 632	10
U. S. v. Texas, 143 U. S. 621	15
United Kingdom v. Norway	16

INDEX—(Continued)

CITATIONS

U. S. Constitution and Statutes: Page

Section 3, Article IV 23, 26
La. Territory Treaty, 1803 22
Act of April 21, 1806 ..... 17, 18, 19
Act of February 10, 1807 6
Act of February 20, 1811 ..... 21, 22
Act of April 8, 1812 ..... 4, 9, 21, 22, 27
Act of April 14, 1812 21
Act of February 10, 1895 18
Revised Statutes, Secs. 2867, 2868 8
Submerged Lands Act 9, 16, 17
Outer Continental Shelf Lands Act 9
Alaska Treaty 6, 8
U. S. Code Title 28, Rule 24 (a), (2) and (3) 2
U. S. Supreme Court Rule 9 (2) 2

Louisiana Statute:

Act 33 of 1954 26

Miscellaneous:

U. S. C. G. Charts, La. Coastline 1267, 1270, 1272, 1279..... 20
Official French maps, 1701 and 1705, of La. Territory's Gulf Coastal Waters 10
Continental Shelf Map 10
C. G. 169, Boundary Lines of Inland Waters 19
Atty. Genl. Brownell's Testimony re: Shoreline and Coastline 12, 13, 14
Secretary of State Dulles' Letter 4, 24
Jefferson's Letters, 1793 and 1806, ... 4, 5, 16
Madison's Letter, 1807 5

NO. 11 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA, DEFENDANT

MOTION FOR RECONSIDERATION OF ORDER DENYING RIGHT OF INTERVENTION, AND SUPPORTING BRIEF IN ANSWER TO U. S. BRIEF FOR JUDGMENT

Motion To Reconsider Order Denying Right Of Intervention

The Parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary, Applicants for intervention, move the Court to re-consider its order of March 25, 1957 denying them their legal right to intervene as defendants herein. Said order of denial is contrary to the law and facts, as shown by Applicants' original motion and supporting brief for intervention.

Applicants showed that they have a legal property right and interest in funds for distribution and in

property subject to disposal by judgment and orders of Court in this action, in which they would be adversely affected; and that their interests would be inadequately represented and they may be bound by a judgment in this case.

New Rule 9 (2) of this Court adopts the applicable Federal Rules of Civil Procedure, Title 28, U. S. Code, enacted by Congress, in original actions in this Court.

Title 28, Rule 24 (a), (2) and (3) clearly provide for "Intervention of Right", under all the facts above shown.

In its order of denial the Court overlooked citations of authorities submitted by interveners showing that it long has been settled by this Court that claims to property or funds under control of the Court may be dealt with as ancillary to the suit in which control is exercised—and this although independent suits to enforce the claim could not be entertained in this Court; and also that when the jurisdictional requirements are satisfied, as in this case, individual parties whose presence is necessary or proper for determination of the case between the States (and United States) are properly made parties defendant.

The damage and injury which may be caused Interveners by said order of denial can still be avoided by this Court recalling said order and permitting Interveners their right under the law to their day in Court,—instead of denying them an opportunity of due process of law before judgment is rendered by which they may be bound as to their legal rights, property and funds subject to said judgment.

This Court assigned no reason for its order of denial of applicants' legal right of intervention.

The Court's denial can only be construed as relieving applicants for intervention of any obligation to be bound by any judgment or orders in this case which may affect their property rights and their constitutional right of property taxation and local self-government within their jurisdiction, co-extensive with that of the gulfward boundary of the State, 3 leagues from the coast line in the Gulf of Mexico.

To construe otherwise would be to deny applicants of their property rights without due process of law, in violation of the Fifth Amendment to the U. S. Constitution.

U. S. Brief Contends Political Statement Re 3-Mile Belt Supercedes Acts Of Congress

It is plain from the position taken for the United States in their brief in support of motion for judgment, that it is their purpose to disregard the applicable provisions of the Constitution and Laws of the United States, and to use certain unfounded "political statements" to secure judicial sanction for their taking of the submerged lands and resources of the State of Louisiana, within its historic boundary, 3 leagues from the coast line in the Gulf of Mexico, in which Interveners have legal and property rights, in an effort to circumvent the plain provisions of the Submerged Lands Act of Congress.

The claim for the United States is that the alleged traditional 3-mile from shore belt national policy,

(based upon erroneous statements and claims), restricts the seaward limits of the State to three miles from shore, regardless of the State limits fixed by Congress in the Act of its Admission into the Union on April 8, 1812 at 3 leagues from coast in the Gulf of Mexico, and regardless of the acknowledgment of ownership and quitclaim to the State in the Submerged Lands Act within 3 leagues from coast in the Gulf of Mexico.

Their position is summarized in a letter written to the Attorney General by Secretary of State John Foster Dulles, dated June 15, 1956 (APPENDIX B, pp 176-180), which attempts to support a traditional 3-mile limit national policy, and which the brief says the Court must adopt as controlling in this case. (U. S. Br. pp 59-60, 70-71).

Let us analyze Mr. Dulles' letter:

Claim For 3-Mile Belt National Policy Based On Jefferson Letter, 1793

First, the Secretary's letter states that the United States was the first nation to adopt the concept of the old cannon ball range into a specific distance fixed at 3 miles, in a note to the French Government on November 8, 1793, by Thomas Jefferson as Secretary of State.

A reading of the quoted portion of said letter will disclose that what Jefferson actually wrote was, (1) The greatest distance asserted among nations was upwards of **20 miles**; (2) the **smallest distance** claimed by any nation, "is the outmost range of a cannon ball, usu-

ally stated at one league"; (3) that 3 **sea leagues** has some authority in its favor; (4) the character of our coast would entitle us, "to **as broad a margin** of protected navigation," as any nation; (5) **not proposing, however, at this time to fix the distance to which we may ultimately insist upon the right of protection;** and (6) the President gives instructions **for the present** to the distance of one sea league, or 3 miles from shore.

Jefferson Repudiated 1793 Letter Established Fixed Limit, And Claimed To Gulf Stream

But Secretary Dulles' letter fails to state that the record shows that in 1806 **Thomas Jefferson** as President **repudiated the above declaration as establishing a fixed limit,** and he claimed that the limit of neutrality should extend **"to the gulf stream which was a natural boundary (!)** and within which we ought not to suffer any hostility to be committed." THE SOVEREIGNTY OF THE SEA by Thomas W. Fulton, 1911, p. 575.

Madison Claimed To Gulf Stream

Further, although the Secretary of State's letter quotes Secretary of State Madison, in 1807, to the effect that there could be no pretext for allowing less to the nation than a marine league from the shore, his letter is silent on Madison's historic letter to Messrs. Monroe and Pinkney, Ministers to London, on May 17, 1806, as follows:

> "In defining the distance protected against belligerent proceedings, it would not, perhaps, be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by **the well defined path**

of the Gulf stream, to expect an immunity for the space **between that limit and the American shore."**

Again his letter does not point out that evidently President Jefferson and Secretary Madison saw to it that their statements regarding the natural Gulf stream limits were adopted by Congress.

1807 Act Of Congress Ratified Gulf Stream Claim

On February 10, 1807, President Thomas Jefferson signed an Act of Congress which authorized the President to cause a survey to be taken of the coasts of the United States, "within 20 leagues of any part of the shores of the United States," and beyond "to the Gulf stream," as in his opinion may be especially subservient to the commercial interests of the United States. Laws of the U. S. A. Vol. 4, 1789-1815, pp. 79-80.

Now, those are the facts of record with relation to the Statements by Jefferson and Madison which are still being misused and abused as a basis for a claim of a traditional 3-mile belt from shore for the United States.

Further, Secretary Dulles' letter attributes to Secretary of State Seward, a position supposedly illustrating his observance of the 3-mile belt principle.

Secretary Seward Negotiated Alaska Treaty 10 Leagues From Coast (Not 3 Miles)

To the contrary, however, it was Secretary Seward who negotiated the Treaty with Russia for the purchase of the Alaska Territory on June 20, 1867, 15 Stat. 539, which fixed the Alaska Territory maritime boundary out to "10 marine leagues from coast".

Does this look like Secretary Seward advocated the 3-mile belt?

The letter referred to by Secretary Seward to the Spanish Minister in 1862 involved a diplomatic exchange between Britain and Spain over Spain's 6 miles maritime claim.

As a matter of fact at that time Great Britain exercised maritime jurisdiction under Acts of Parliament at various distances from 2 leagues to 100 leagues.

Spain adhered to its 6 miles claim.

Masterson, pp 256 and 288-289.

No Treaty Ever Fixed 3-Mile Belt

It is admitted that there have been numberless diplomatic exchanges, conventions, commercial treaties and the like, but none of these ever fixed the territorial limits of the United States at 3 miles from shore.

Those diplomatic exchanges were merely expressions of "firm intention to uphold the principle that 3 marine miles constitute the proper limits of territorial waters".

Masterson, pp 346, 352, 395, Foot-note 54.

In view of all these inaccuracies in the Secretary of State's letter to the Attorney General, how can the Court consider it as evidence of anything relating to maritime boundaries?

In **Church v. Hubbart**, 2 Cranch 187, 234, regarding the claim that the maritime boundary extended

only to the cannon short, or 3-mile belt, this Court said:

> "Indeed the right given to our own revenue cutters, to visit vessels four leagues from our coast, is a declaration that in the opinion of the American Government, **no such** principle as that contended for has a real existence".

And, in **U. S. v. Bevans**, 1818, 3 Wheat 336, 385, this Court held:

> "What, then, is the extent of jurisdiction which a State possesses
>
> "We answer, without hesitation, **the jurisdiction of a State is co-extensive with its territory; co-extensive with its legislative power.**"

Congress Fixed 4 Leagues, And Other Distances Further Seaward

Although the entire basis of the United States claim, to Louisiana's submerged lands and resources in the so-called disputed area lying between 3 miles from shore and 3 leagues from the Coastline in the Gulf of Mexico, is their groundless so-called traditional national policy of the 3-mile belt from shore, which is disproved above, the record shows that Congress has asserted its legislative powers beyond 3 miles from shore consistently.

From 1790 to date, as found in Revised Statutes 2867 and 2868, Congress fixed jurisdiction for search and seizure of vessels at 4 leagues.

The U. S. Senate ratified the Alaska Purchase Treaty with Russia in 1867, fixing its outermost limits at 10 marine leagues from coast.

The Submerged Lands Act of 1953, 67 Stat. 29, Sec. 2 (b) and (c) and Sec. 3, quitclaimed all right to the submerged lands and natural resources to Gulf Coastal States at a mixiumum of 3 leagues from the coast line, if such was its boundary at the time the State was admitted into the Union, as in the case of Louisiana, 2 Stat. 701.

And, Congress also asserted its legislative jurisdiction to the outer edge of the Continental Shelf by an Act "To provide for the **jurisdiction** of the United States over the submerged lands of the Outer Continental Shelf", etc., 67 Stat. 462.

La. Territory Extended Generally To Continental Shelf

Contrary to the contention made in the U. S. Brief, p. 127, that the Louisiana Territory acquired from France was bounded by the shore, and, consequently, Louisiana could not have been given a greater extent, is the statement by Thos. Jefferson, "The ancient boundary of Louisiana" extended westwardly to the Rio Norte or Bravo, and eastwardly to the Rio Perdido, between Mobile and Pensacola. See THE LOUISIANA PURCHASE by Binger Herman, Commissioner of the General Land Office, 1900, p. 77, for letter by Thomas Jefferson to Mr. Breckenridge, August 12, 1803.

This Court likewise held that,

> "Under the treaty of cession of Louisiana made with France, April 30, 1803, the United States always claimed **to the Perdido River** on the east. 11 Stat. at L. 761. President Madison's proclamation in 1810 directed that possession should be taken of said territory East of the Mississippi

and Iberville Rivers to the Perdido." **United States vs. Lyndes Heirs**, 1871, 11 Wall. 632.

The extent of the Louisiana Territorial Waters in the Gulf are shown by dotted lines on maps made by N. de Fer, official French Geographer in 1701 and 1705, and particularly identified by legends with de la Salle's discovery of the Louisiana Territory.

We attach a "Map Showing The Continental Shelf", marked "EXHIBIT 16". The dotted area shown east of the United States is the Continental Shelf. The heavy line shown in the Gulf of Mexico is superimposed according to scale to show the Louisiana Territory coastline, according to the official French Geographer's 1701 and 1705 Maps. There is also superimposed according to scale the 20 league line in relation to the Outer Continental Shelf in the Atlantic Ocean. From this the Court may see that the old mariners who did hand-sounding from their sailing vessels knew fairly well where the Continental Shelf lay, why the Continental Congress demanded that the 20 league line be written in the Treaty with the British Crown in 1783, and also why President Jefferson and Secretary Madison in 1806 officially stated that our Nation's boundary should extend to the Gulf stream, which they said was a natural boundary.

No Basis For So-Called "Traditional 3-Mile Belt National Policy"

We submit that the facts shown from the official historic records, as above, absolutely refute any basis for a so-called traditional national policy establishing either a 3-mile from shore belt, boundary, or jurisdiction in any sense of the word.

The fact should be noted, too, that the same contentions now made for the United States by the Attorney General and the Secretary of State were urged before the Senate Interior Committee during Hearings on the Submerged Lands Act in March, 1953, passed by Congress and signed by the President in May, 1953.

Attorney General And State Department Made Same 3-Mile From Shore Recommendation To Congress—But Congress Rejected It

Both the Attorney General and Secretary urged the so-called traditional 3-mile from shore belt policy of the United States, and hinted broadly, as the Secretary now does in his letter to the Attorney General, that dire results would follow to the welfare and defense of the nation if their recommendations were not accepted. But they were rejected by Congress, because the Submerged Lands Act enacted by Congress adopted as a base line, the coast line or outer boundary of inland waters, not the shore line still contended for in the U. S. brief.

The Senate Interior Committee and the Congress knew full well the meaning of "the coast line".

In the Hearings before the Committee in October, 1949, the method of designating and defining the coast line by the federal government, under applicable Acts of Congress, was thoroughly discussed with the Committee. See pp 194, 195 of said Hearings.

"Coastline" Distinguished From "Shoreline"

The Senate Committee also went into detailed examination of the difference between "shore line" and "the coast line" in its Hearings in March, 1953.

While Attorney General Brownell was testifying, he was questioned at length on this subject, as follows:

@ p. 931:

"Attorney General Brownell. The traditional 3-mile limit would be an accurate description.

"Senator Anderson. It is very important that we know **out from what.** Out from **the coastline or the shoreline?** The Holland bill says the coast."

@ p. 932:

"Attorney General Brownell. The general description **we would use** is **the shoreline.**

"Senator Anderson. Shoreline. **You recognize that that is completely different from the language in the Holland bill** and the Daniel bill?

"Attorney General Brownell. I believe **you are correct** in that statement."

@ p. 933:

"Senator Anderson. I could not agree with you more, General Brownell, and I think if somebody came in with a line drawn that **3 miles from the shore, it might be one thing;** but **3 miles from the coast,** if the coast is nebulous and **reaches out to the farthermost edge of the farthermost reef,** it is quite a problem as to where it is going to be.

"Attorney General Brownell. **I agree with that."**

@ p. 939:

"Senator Long. There has been some **question raised** with regard to **whether** you should **use a shoreline definition** or a **coastline definition.** * * *

You would have a boundary between inland waters and the marginal belt; and, based upon that, if there were to be a 3-mile limit, it would have to measure forward from **the boundary of inland waters,** which **is the distinction which is made between the word 'coast' and the word 'shoreline.' The word 'coast' means to measure from the boundary line of inland waters, while the word 'shoreline' means to measure from the shore itself.**

"I would point out to you that, **with regard to the State of Louisiana,** the Enabling Act that brought the State in refers to the southern **boundary as 'extending to the said gulf** to the place of beginning, including all island **within 3 leagues of the coast.'**

"Congress cannot very well apply a shoreline definition to Louisiana after it has already fixed its boundary as a coast line, can it?

"Attorney General Brownell. We would want to give that a little study, Senator, before we answered that particular point."

@ p. 947:

"Senator Kuchel.* * * **When you suggested the 'shoreline'** be used as the basis for any congressional description, **you would** of course **exclude** from your use of the word 'shoreline' **any inland waters along any coastal State involved.**

"Attorney General Brownell. **That is right."**

"Senator Kuchel. The reason I ask that question is that the bill introduced by the Senator from Florida defines the term 'coastline' as meaning the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and is a line marking the seaward limit

of inland waters, which includes all estuaries, ports, harbors, bays, channels, straits, historic bays and sounds, and all other bodies of water which joins the open seas."* * *

@ p. 948:

"In either of those instances would you object if these bills failed to describe in metes and bounds the lands that the congress is concerning itself with and used language generally as the Holland bill does?

"Attorney General Brownell. We certainly could not object to that. **That is a matter of congressional policy.** We only make our suggestion for the purpose of certainty."

The State Department was represented by its Deputy Legal Adviser, Mr. Tate, in the same Hearings. He made the same broad and unfounded statements that the federal government's claim as to territorial waters always has been 3 miles from shore,—and he added, "This position has never been changed." pp 1052, 1053, 1056.

When asked if Congress recognized a coastal State's seaward boundary at more than 3 miles from shore, would that constitute a departure from established historic positions of the United States with respect to outer limits of territorial waters of the United States, and Mr. Tate answered, most positively (and most incorrectly), as follows:

@p. 1065:

"Mr. Tate. As I said before, it would be inconsistent with the traditional claim of the United States.

"Senator Jackson. The claims that this country has maintained ever since Thomas Jefferson was Secretary of State?

"Mr. Tate. That is right."

@ p. 1068: Mr. Tate testified that the United States claims the right of exploration and exploitation of the seabed and subsoil out to the extent of the Continent Shelf; and if Congress decides that exploitation should be done by the States, "then I would assume they (Congress) could transfer that right of exploitation to the States."

Mr. Tate repeated the same testimony @ p. 1070 in answer to a question by Senator Long.

@ p. 1073, in answer to a question by Senator Long, Mr. Tate further testified that the alleged statement by Mr. Jefferson (3 miles) could only be made on behalf of this nation vis-a-vis other nations. **"He would not have purported to have settled the question as between the federal government and the state governments."**

He there recognized the principle held by this Court in the Cases of **U. S. vs. Texas** and **In re: Cooper**, above quoted.

But, the U. S. Brief attempts to use Secretary Dulles' letter to settle their claim of boundary against the State and says this Court is bound to follow it, regardless.

@ p. 1077, Mr. Tate further testified, there was no protest by any foreign nation against the Texas 3 league boundary.

There certainly has been none against Louisiana's 3 leagues boundary either since 1812, and under the International Court of Justice decision in **United Kingdom v. Norway,** the 3 leagues from coast Act of Congress settles that.

@ p. 1084, Senator Long asked whether, "the coast line definition would more accurately describe the marginal belt rather than a shore line definition, inasmuch as a shore line definition would have to go inside the bays.", and Mr. Tate answered, "To that extent, yes."

The above testimony elicited from the Attorney General and Legal Adviser of the State Department shows that they attempted to have the Congress adopt their version of the so-called 3-mile from shore traditional maritime belt, which Congress rejected.

Further, the misconstrued Jefferson 1793 letter, and other State Department letters to members of Congress, attempting to influence the Submerged Lands legislation were all considered by Congress. See Senate Interior Committee Hearings, 1953, pp. 318, 325, 322, 323, 462, 1062.

Section 2 of the Submerged Lands Act defining the term "boundaries", within which the submerged lands and resources were quitclaimed to the State, includes the boundaries in the Gulf of Mexico as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, extending from **the coast line** not more than 3 **marine leagues into the Gulf of Mexico.**

And, Paragraph (c) of said Section 2 defines the term "coast line" as **the line** which is in direct contact with the open sea and **the line** marking the seaward limit of inland waters.

It should be noted that Congress used the term "coast line" and **"the line** marking the seward limit of inland waters." Congress could not have been more specific in rejecting the "shore line" as the baseline recommended by the Attorney General and State Department, when it defined "the coast line" as **"the line** marking the seaward limit of inland waters as the base line from which the 3 miles or 3 marine leagues should be measured from the coast line into the Gulf of Mexico.

As shown on pp 14-17-18 of Interveners' Brief in support of motion herein previously filed, the 1807 Act of Congress authorized the President to cause a survey to be taken of the **coasts** of the United States within 20 leagues of any part of the shores and even to the Gulf stream; that the 1895 Act of Congress vested the authority in the Secretary of the Treasury to designate and define by suitable coast objects, **"the line** dividing the high seas from rivers, harbors and inland waters", while the 1807 Act was still in effect, making it lawful to designate said coast line within 20 leagues of the shores or even to the Gulf stream.

"Coastline" Not Fixed By Coast Guard For Navigation, But Fixed Originally Under 1806 Act Of Congress—Long Before Any Law Enacted Regarding Navigation

The U. S. Brief contends that the so-called "Coast Guard line" should be rejected as the base line from which to measure the State's seaward boundary, be-

cause they say this line only provided for Rules of Navigation, but did not form a part of the coast line of Louisiana.

The U. S. brief evidently fell into error through the belief that said coast line was originally drawn by the Coast Guard in recent years, because they say, p. 132, that the Commandant of the Coast Guard stated that, "These lines are not for the purpose of defining federal or state boundaries, nor do they define or describe federal or state jurisdiction over navigable waters."

As a matter of fact, the Commandant of the Coast Guard had no authority to judge as to the purpose of the coast lines, in face of the positive provision of the Act of Congress of 1895, 28 Stat. 672, which provided for the designation and defining of said coast line as **"the line** dividing the high seas from rivers, harbors and inland waters."

It appears unmistakably that the Louisiana coast line was designated and defined under an Act of Congress of April 21, 1806, 2 Stat. 394, authorizing the Secretary of the Treasury "to cause a survey to be made of the seacoast of the Territory of Orleans," long before Congress ever enacted "Navigation" laws to fix inland water rules, or to adopt the international rules of navigation on the high seas. 23 Stat. 438, Apr. 29, 1864, Amd. Aug. 19, 1890.

(This was 140 years before the Commandant of the Coast Guard was authorized by Congress under Sec. 101 of Reorganization Plan No. 3 of 1946, to designate and define the Coastline as the outer boundary of inland waters, as an amendment to the 1895 Act.)

And, on December 20, 1810, a resolution was adopted by Congress, directing the Secretary of the Treasury to report to the House on the survey of the coast of the Territory of Orleans, under authority of the Act of April 21, 1806. History of Congress, Dec. 10, 1810.

We find, too, that this Court in **Queyronze vs. United States,** 1865, 3 Wall 83, 93, had occasion to hold that Ship Shoal Light was laid down on the coast survey charts more than 100 miles west of the mouth of the Mississippi.

The same Ship Shoal Light is one of the coast objects presently marking the Louisiana coast line, as shown in the U. S. Coast Guard Pamphlet C. G. 169, March 1, 1955, PART 82. **Boundary Lines of Inland Waters.** (Please note the designation: **Boundary Lines of Inland Waters).**

Section 82. 1 states,

"The waters inshore of the lines described in this part are 'inland waters' * * *. The waters outside of the line described in this part are the high seas * * *.

Sections 82.95 and 82.103 of said PART 82 describe said lines as follows:

"82.95 MOBILE BAY, ALA., TO MISSISSIPPI PASSES, LA.—Starting from a point which is located 1 mile, 90° true, from Mobile Point Lighthouse, a line drawn to Mobile Entrance Lighted Whistle Buoy 1; thence to Ship Island Lighthouse; thence to Chandeleuer Lighthouse; thence in a curved line following the general trend of the sea-

ward, high-water shore lines of the Chandeleuer Islands to the southwestern-most extremity of Errol Shoal (Lat. 29°35.8' N., Long. 89°00.8' W.); thence to Pass a Loutre Lighted Whistle Buoy 4."

"82.103 MISSISSIPPI PASSES, LA., TO SABINE PASS, TEX.—A line drawn from Pass a Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Mid-channel Lighted Whistle Buoy; **thence to Ship Shoal Lighthouse;** thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1."

There is no complication or difficulty in establishing the coast line, or **the line** marking the seaward limit of inland waters, as the base line adopted by Congress in the Submerged Lands Act from which to measure the State's seaward boundary within which Congress acknowledged and quitclaimed State ownership of submerged lands and natural resources.

La. "Coastline" already Established Under Acts Of Congress

The entire coast line of the State of Louisiana is drawn on U. S. Coast and Geodetic Survey Charts already established and defined as 1267, 1270 and 1272 to 1279, inclusive.

The matter becomes very simple if we adhere to the constitutional right of Congress to admit new States into the Union and fix their boundaries, if we construe the limits as described by Congress in the Act admitting Louisiana as a State into the Union on April 8, 1812, because the State's southern limit described in the Gulf, regardless of references to islands, was and is ,"3 leagues of the coast."

In view of the efforts made in the U. S. brief to change and restrict Louisiana's gulfward boundary to the unfounded so-called traditional 3 miles from shore belt, it may be well to refer to the historic background of Louisiana's admission as a State. By Act of 1804, all that portion of the Louisiana Territory ceded by France to the United States south of the 33° of North latitude was created into the Territory of Orleans.

State Boundary Cannot Be Changed Without Consent Of Its Legislature

While debating on the Act to enable the people of the Territory of Orleans to form a Constitution and State Government, the question of boundary was argued. It was pointed out by Mr. Pitkin (R. Conn.), that Congress had liberty to alter the boundary before they made them a State but not after, because after the territory becomes a State her boundaries cannot be altered without her consent. (See THE HISTORY OF CONGRESS. H. R. 11th Cong. 3rd. Sess. 1811, p. 519).

In this connection, it should be recalled that after the State was admitted by Act of April 8, 1812, Congress passed an Act on April 14, 1812, to enlarge the landward limits of the State, with the proviso: "In case the legislature of the State of Louisiana shall consent thereto."

In like manner the U. S. Senate took the official position that it had no power to change the boundaries of a State without its consent. See Interveners' Motion and Brief, footnote 4.

Finally, by Act of February 20, 1811, Congress passed the Enabling Act for the Territory of Orleans

and described its territorial limits as including **all that part of the Louisiana Territory ceded by France** to the United States on April 30, 1803 **"contained within the following limits,** that is to say: Beginning at the mouth of the River Sabine; thence, by a line to be drawn along the middle of said river, **including all islands** to the thirty-second degree of latitude, etc., thence, bounded by the said Gulf, to the place of beginning, **including all islands** within 3 leagues of the coast;"

It must be borne in mind that what Congress did in the Enabling Act of 1811, as well as in the Act of Admission on April 8, 1812, in describing that part of Louisiana Territory to be included within the limits of said Orleans Territory and the State of Louisiana was describing their boundaries or "limits" and not granting or merely including islands.

Strange, although the first part of the description in both Acts describes the State's Western boundary as beginning at the mouth of the River Sabine thence "along the middle of the said River, including all islands," the U. S. brief is perfectly willing to admit that that part of the description fits Louisiana's western boundary as the middle of the Sabine River. U. S. Brief p. 107.

But, when the same language is used at the end of the boundary description, within 3 leagues from the coast as including all islands, the U. S. brief contends that this same manner of descriptive language includes only the islands but not the distance at 3 leagues from coast.

The brief likewise refuses to accept the word "Coast" and says that when the State entered the

Union its boundary was at the shore, or 3 miles from shore. P. 138.

U. S. Brief Would Have Political Statement Supercede Acts Of Congress And Change State Boundary Without Its Consent

In their utter disregard for the authority of Congress to admit new States into the Union within prescribed limits under Section 3, Article IV of the Constitution, the Act of Congress fixing the limits of Louisiana's boundary "within 3 leagues of the coast", in the Gulf of Mexico; and the Submerged Lands Act of Congress quitclaiming to the State its submerged lands and natural resources within the boundaries of the State as they existed at the time such State became a member of the Union, extending from the coastline not more than 3 marine leagues into the Gulf of Mexico, (which has been recognized by this Court as valid legislation, R. I. vs. La. 347 U. S. 272), the U. S. Brief states the following:

@ p. 38:

> "If the State, as so described, was entitled to a marginal belt in the Gulf, that must have resulted **not from the terms of the description** but from a general national policy * * * The United States has always limited itself to a claim of a marginal belt of not more than three geographic miles. In this view, it is unnecessary to decide whether Louisiana in fact had a marginal belt when it entered the Union."

@ p. 70:

> "As already noted, it is therefore unnecessary to consider whether Louisiana had a 3-mile boundary before those enactments, either by vir-

tue of the general federal claim of 3 miles or otherwise. It is sufficient to know that, for the purposes of the Submerged Lands Act, the maritime boundary of the State is 3 miles in the Gulf of Mexico."

@ p. 102:

"Neither Act (Submerged Lands, or Outer Continental Shelf), purports to restrict State boundaries."

@ p. 71:

"The Secretary of State has furnished the Attorney General with a statement, for presentation to the Court in this case." * * *

"We submit, however, that the Secretary's statement alone is enough to conclude the matter here."

If such be the case, then the State Department supersedes the Congress and the jurisprudence established to the contrary by this Court as well.

However, the entire basis of the position taken in the U. S. Brief regarding the alleged traditional 3-mile rule as a State's maritime boundary, U. S. Brief 59, 60, 108, 149, 156, etc., is made irrelevant by the very admissions made in their brief, as follows:

@ p. 105:

"This case involves rights of a proprietary nature."

@ p. 110:

"We fully agree with Louisiana that what is involved here is a domestic dispute as to rights

to exploit the resources of the Continental Shelf. However, Congress has chosen to allocate those rights by reference to State boundaries."

Controversies over such matters of property rights and domestic boundary are within the exclusive jurisdiction of the Courts, and not any political branch of the government.

In **United States v. Texas,** 1892, 143 U. S. 621, 12 S. Ct. 488, 491, this Court held:

> "A controversy between the United States and a State concerning the boundary between the State and a territory of the United States does not fall within the principle of the cases which hold that the courts have no jurisdiction to determine 'political questions.' That principle applies to controversies with independent nations, the determination of which is committed to the executive department of the government."

> "And referring to Foster v. Neilson and U. S. v. Arrendondo (upon which the United States brief relies), the Court said "these cases relate to questions of boundary between foreign nations and have no application to a question of that character arising between the general government and one of the States composing the Union."

Again this Court held,

> "* * * that without the clear authority of the law of Congress, **the executive can never,** by determining a so-called political question, or by construing an Act of Congress or a treaty, **conclude the rights of persons or property under the protection of the Constitution and laws of the United States, or conclude the Courts of the United States in a determination of these rights." In re: Cooper,** 143 U. S. 472, 12 S. Ct. 453, 459.

State Limits 3 Leagues From Coast In Gulf

In like manner, although the Submerged Lands Act acknowledges State title to and quitclaims all submerged lands and resources within a maximum of 3 leagues from coast in the Gulf of Mexico, the U. S. brief says that the grant there made to the State was in fact limited to 3 marine miles therefrom,—showing that although the Attorney General's suggestion to the Senate Committee as above to limit the area of the Submerged Lands Act to 3 miles from shore was rejected by Congress, the same contention is made here with the evident hope that the Court likewise will ignore or now reject the plain provisions of the Submerged Lands Act extending to a maximum of 3 leagues from coast in the Gulf of Mexico.

La. Act 33 Of 1954

The U. S. brief likewise misconstrues Louisiana Act 33 of 1954, a photostatic copy of the original of which Act is attached as "Exhibit 5" to Interveners' motion for leave to file intervention and supporting brief.

A reading of this Act will show simply that its preamble recites that under Section 3 of Article IV of the U. S. Constitution, Congress admitted Louisiana as a State into the Union and fixed its gulfward boundary at 3 leagues from coast; that pursuant to Acts of Congress of February 10, 1807 and February 19, 1895, agencies of the federal government authorized by said Acts designated and defined the Louisiana coast line; that this Court held that the waters inside of said coast line designated and defined under said Act of 1895 off New York harbor are as much a part of the inland waters of the United States "within the

meaning of this Act" as the harbor within the entrance; and that another Federal Court held that **the purpose of said Act was to define the inland waters of the United States;** (contrary to the U. S. brief, contention that said coast line is only a navigation line, p. 133); and said Act provided that the State's historic boundary should be **redefined** to avoid confusion; therefore, said Act provided that the historic gulfward boundary of the State extended 3 marine leagues from coast into the Gulf of Mexico, and that the coast line of the State be accepted and approved as designated and defined in accordance with the applicable Acts of Congress as detailed therein, and as shown above in Sections 82.95 and 82.103 of PART II C. G.-169, Re: **Boundary Lines of Inland Waters.**

Therefore, said Act 33 of 1954 does not seek to extend in any manner Louisiana's historic boundary, nor does the Act require approval of Congress under provision of the Submerged Lands Act to entitle the State to its submerged lands and resources 3 leagues from coast, because said Act merely redefined its original boundary as fixed by Congress and as described in its 1812 Constitution adopted under the Enabling Act prior to and at the time of its admission as a State, which likewise was approved by the Act of Congress of April 8, 1812.

Section 4 of said Act, 67 Stat. 29, regarding **SEAWARD BOUNDARIES** provides:

* * * "Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three

geographical miles if it was so provided by its Constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

The boundary of the State of Louisiana, defendant, as described in its Constitution of 1812, prior to and at the time it became a member of the Union, and as approved by and again described in the Act of Congress of April 8, 1812, which admitted the State into the Union, is three leagues from **coast** in the Gulf of Mexico.

Nowhere in the State's original Constitution or in the Act of Congress admitting Louisiana as a State into the Union and fixing its boundary will any reference be found fixing its gulfward boundary as "3 miles" or as any distance from "shore"; but to the contrary the only gulfward boundary described therein is "3 leagues" from "coast."

Said 3 leagues from coast historic boundary of the State of Louisiana, defendant, as fixed by the Act of Congress admitting it as a State into the Union on April 8, 1812, has been adjudicated upon by this Court in **Louisiana v. Mississippi**, 202 U. S. 1, 26 S. Ct. 408, 416, as follows:

> "2. The state of Louisiana was admitted into the Union by the act of Congress approved April 8, 1812 (2 Stat. at L. 701, chap. 50), which commenced as follows:
>
> " 'Whereas, the representatives of the people of **all that part of the territory** or country **ceded** under the name of 'Louisiana' by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United

States and France, contained **within the following limits,** that is to say: **Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river,** including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain **to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning** including all islands **within three leagues of the coast; . . .'** (Emphasis added, to show that the **limits** fixed were "within 3 leagues of the coast.")

"Map of diagram No. 1, given in the opening statement, shows the limits as thus defined."

A reprint of this map of diagram No. 1 with a reprint of the map attached to Act 33 of 1954 on the same scale, marked diagram No. 2, is attached hereto, marked Interveners' Exhibit 2.

From an examination of these two maps, it will be seen that the outer boundary line, or gulfward limit of the State of Louisiana as shown in Diagram No. 1, held by this court to be a correct showing of the State limits as defined in the Act of April 8, 1812, compares with the outer gulfward boundary of Louisiana as shown on the map officially adopted by Act 33 of the 1954 Louisiana Legislature."

It is regrettable that so much time was needed to cover so many erroneous statements, and conclusions found in the brief for the U. S. in support of motion for judgment.

If Interveners are to be bound by the judgment and orders of this Court in this case, they should be granted leave to intervene to properly and adequately represent their legal and property interests, as shown in their motion for leave to file intervention, supporting brief and answer and as further herein shown.

CONCLUSION

It is respectfully submitted that the order denying Interveners' right of intervention and to be heard in this cause should be reconsidered, and recalled, by the Court and an order rendered granting the same.

Respectfully submitted,

L. H. PEREZ, District Attorney and ex-Officio Attorney for Parishes of Plaquemines and St. Bernard and Counsel for Interveners,

L. O. PECOT, District Attorney and ex-Officio Attorney for Parishes of Iberia and St. Mary and Counsel for Interveners,

BERTRAND DE BLANC, District Attorney and Counsel for Interveners,

FRANK LANGRIDGE, District Attorney and ex-Officio Attorney for Parish of Jefferson and Counsel for Interveners,

FRANK J. LOONEY,
Of Counsel.

April 1, 1957.

PROOF OF SERVICE

I certify that I served copies of the within motion and brief on the Attorney General and Solicitor General of the United States by Air Mail addressed to their offices in the Department of Justice Building, Washington, D. C., and by mailing same to the Attorney General of Louisiana to his office, State Capitol, Baton Rouge, La., and to the other attorneys of record for the State at their addresses.

Of Counsel for Interveners, Defendants, and a member of the Bar of the U. S. Supreme Court.